

REMARKS

I. Status of the Claims

Claims 27 and 29-40 are pending. Claims 30-40 are withdrawn. Claims 27 and 29 stand rejected under 35 U.S.C. §112, first paragraph and §102. The specific grounds for rejection, and applicants' response thereto, are set out in detail below.

II. Rejection Under 35 U.S.C. §112, First Paragraph

Claims 27 and 29 stand rejected under the first paragraph of §112 as lacking an adequate written description. The rejection focuses on two aspects of the claims – combinations of peptides and sequences in addition to those recited in the claims. Applicants traverse both aspects of the rejection.

Addressing the second aspect of the invention, applicants submits that there is no basis in any written description case law, particularly in *Vas-Cath*, that would justify limiting the claims to only those particular sequence. Applicants submit that the standard for written description is whether one of ordinary skill in the art would readily apprehend that applicants were in possession of the invention as claimed at the time of filing. A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *In re Wertheim*, 541 F.2d at 263, 191 USPQ at 97. See also MPEP §2163.04.

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The present application describes a variety of peptides that can be used to screen for antibodies in subjects potentially infected with EBV and afflicted with an autoimmune disorder. Those of skill in the art readily understand that the recited peptide sequences maybe included within larger peptide segments (but not longer than about 40 amino acids as recited) while still accomplishing the goals of the present invention. The examiner has made no effort to establish why one of skill in the art would not immediately comprehend that the sequences beyond those recited can be virtually any other peptide sequence. As such, the rejection is faulty on its face.

The issue regarding the combinations may be a misunderstanding on the part of the examiner. The combinations are not *joined* peptides but, rather, a set of distinct peptides that may be combined, for example, in an array. Thus, it is again believed that those of skill in the art readily understand that the recited peptides can be used in combination to identify a plurality of antibodies, each of which binding to distinct peptides.

In light of the preceding arguments and explanation, reconsideration and withdrawal of the rejection is respectfully requested.

III. Rejections Under 35 U.S.C. §102

A. *Ebihara et al.*

Claims 27 and 29 stand rejected over Stuber *et al.* to the extent that the reference is said to disclose a peptide comprising SEQ ID NO: 7. Applicants have deleted SEQ ID NO: 7 from the claims. Reconsideration and withdrawal of the rejection is respectfully requested.

B. Stuber et al. (1995)

Claims 27 and 29 stand rejected over Stuber *et al.* to the extent that the reference is said to disclose a peptide comprising SEQ ID NOS: 15, 16, 34 and 35. Applicants have deleted SEQ ID NOS: 15, 16, 34 and 35 from the claims. Reconsideration and withdrawal of the rejection is respectfully requested.

C. Middeldorp

Claims 27 and 29 stand rejected over Middeldorp to the extent that the reference is said to disclose a peptide comprising SEQ ID NO: 20 and 22. Applicants have deleted SEQ ID NO: 20 from the claims. However, careful review of SEQ ID NO: 5 from the reference reveals that it does not have the terminal glycine residue of applicants' SEQ ID NO: 22. Rather, Middeldorp's SEQ ID NO: 5 has cysteine at that position. Reconsideration and withdrawal of the rejection is respectfully requested.

D. Chen et al.

Claims 27 and 29 stand rejected over Chen *et al.* to the extent that the reference is said to disclose a peptide comprising SEQ ID NOS: 28-30. Applicants traverse. Careful review of FIG. (1A) of the reference will reveal that the illustrated sequence is not a discrete peptide, but rather, is an illustrated portion of a large protein – EBNA-I. Thus, the reference fails to satisfy the recitation in claim 27 of a peptide of about 40 amino acids or less. Reconsideration and withdrawal of the rejection is respectfully requested.

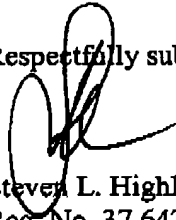
E. Stuber et al. (1992)

Claims 27 and 29 stand rejected over Stuber *et al.* to the extent that the reference is said to disclose a peptide comprising SEQ ID NO: 37. Applicants have deleted SEQ ID NO: 37 from the claims. Reconsideration and withdrawal of the rejection is respectfully requested.

IV. Conclusion

In light of the foregoing, applicants respectfully submit that all claims are in condition for allowance, and an early notification to that effect is earnestly solicited. Should the examiner have any questions regarding this response, a telephone call to the undersigned is invited.

Respectfully submitted,



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